-

THE HON'BLE SRI JUSTICE V.V.S.RAO

-

WRIT PETITION Nos.6057 of 2004,

6541, 11323 and 15393 of 2005

-

Dated: 29.07.2005

-

WRIT PETITION No.6057 of 2004

-

Between:

Alankhanapalli Harijana Labour Contract Co-operative Society Limited

No.1359, rep. By its President, P.Devadas, S/o.Venkataiah, D.No.8/44, Ravindra Nagar, Kadapa Town, Mandal and District and another.

…Petitioners

And

The District Collector and Chairman,

The Hospital Development Society,

Kadapa, Kadapa District and others.

…Respondents

WRIT PETITION No.6541 of 2005

-

Between:

M/s.Nirmala Mahila Mandali, rep. By its President

Smt.G.Devi, W/o.Venkataiah,

Aged about 28 years, Peddagutta Palli Village,

Ontimitta Mandal, Kadapa District.

…Petitioner

And

The District Collector and Chairman,

The Hospital Development Society,

Kadapa, Kadapa District and others.

…Respondents

WRIT PETITION No.11323 of 2005

Between:

M/s.Nirmala Mahila Mandali, rep. By its President

Smt.G.Devi, W/o.Venkataiah,

Aged about 28 years, Peddagutta Palli Village,

Ontimitta Mandal, Kadapa District.

…Petitioner

And

The District Collector and Chairman,

The Hospital Development Society,

Kadapa, Kadapa District and others.

…Respondents

WRIT PETITION No.15393 of 2005

Between:

The Safai Karmachari Welfare Society,

Masapet, Kadapa, rep. By its

Podili Ramulamma,

W/o.Venkataiah,

Aged about 36 years, Siddavatnam Road,

Kadapa.

…Petitioner

And

The District-cum-Chairman,

Hospital Development Society,

Kadapa, Kadapa District and others.

…Respondents

-

-

-

-

-

-

-

COMMON ORDER:

-

The dispute in these writ petitions arises in the context of giving maintenance contract to clean the floors, ward areas and office areas and toilets (hereinafter referred to as 'sanitation work') in the Headquarters Hospitals, Kadapa District. This common order shall dispose of all the writ petitions. The parties in these writ petitions are arrayed as they are in W.P.No.11323 of 2005.

A.P.Vaidya Vidhana Parishad (hereinafter referred to as 'APVVP') is a statutory body constituted under Section 3 of the A.P.Vaidya Vidhana Parishad Act, 1986. It is, *inter alia,* entrusted with the duty of establishing, expanding and administering District, Taluk Hospitals and Dispensaries for providing better medical care in the State of A.P. All the District Hospitals come within the purview of APVVP, the second respondent herein. The Government of A.P issued notifications for efficient functioning of Health Institutions/Hospitals under the control of the Government i.e., Health, Medical and Family Welfare Department. These instructions issued in G.O.Ms.No.90 dated 17.04.2003 mandate the formation of Hospital Development Societies for each District and Taluk Hospitals. One such society is constituted for Kadapa District. The District Collector is the Chairman of Hospital Development Society (HDS) Kadapa and the Medical Superintendent of the Hospital is the Convener of the HDS.

The third respondent issued a tender notice in March 2004 notifying tenders for award of maintenance contract for the sanitation work for the period of six months. It appears that all eligible societies formed with sanitation workers submitted their tenders. However, the tenders were not finalized. The third respondent by proceedings dated 27.03.2004, purporting to obey the instructions of the first respondent nominated Safai Karmacharies Society, the fourth respondent, to undertake sanitation work for the period from 01.04.2004 to 31.10.2004 for a sum of Rs.40,000/- inclusive of material costs. Assailing the same two Safai Karmacharies Societies namely Alankhanapalli Harijana Labour Contract Co-operative Society Limited and Ushodaya Sapai Karmachari Helper Society, filed W.P.No.6057 of 2004 and also sought interim directions suspending the proceedings dated 27.03.2004 issued by the third respondent. By an order dated 31.03.2004, in W.P.M.P.No.7874 of 2004, this Court suspended the proceedings of the third respondent whereunder

the fourth respondent was awarded the maintenance contract for six months.

While the writ petition, being W.P.No.6057 of 2004, was pending before this Court, the third respondent sent a letter being R.C.No.47/HDS/2005, dated 03.02.2005, to the Commissioner, APVVP, requesting to allot sanitation work in District Hospital, Kadapa, to the fourth respondent on nomination basis instead of contract system from 01.04.2005. The Commissioner, the second respondent, by proceedings dated 19.03.2005, accepted the recommendation of the third respondent and awarded maintenance contract to the fourth respondent for a period of six months from 01.04.2005 to 30.09.2005. Assailing the letter of the third respondent as well as the proceedings of the second respondent, M/s.Nirmala Mahila Mandali, filed W.P.No.11323 of 2005. These matters came up before this Court at interlocutory stage, but having regard to the fact that the dispute regarding the award of contract to eligible Safai Karmacharies Society is pending in this Court, the matters were heard. Other writ petitions also deal with the same controversy.

Insofar as the main question as to whether it is competent for respondents 1 to 3 to award the maintenance contract to eligible society on nomination basis is concerned, in the field of public law the matter is well settled. A public authority cannot sell the Government property on nomination basis. Public interest can be sub-served only by inviting tenders or bids. The same principle would equally apply even to a contract where the public authority hires the services of the persons. A reference may be made to **Shri Sachidanand Pandey v. The State of West Bengal**. The Supreme Court after referring to various decisions dealing with the contractual powers of the State made the following observations.

> On a consideration of the relevant cases cited at the bar the following propositions may be taken as well established: State-owned or public-owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism.

In this case though initially tenders were invited, the third respondent awarded the contract to the fourth respondent. It was assailed in W.P.No.6057 of 2004. The proceedings of the third respondent was suspended by this Court. In spite of the same, again the third respondent recommended the second respondent to award the maintenance contract to the fourth respondent on nomination basis. The second respondent accepted the same and awarded the contract on nomination basis, giving a go bye to the tenders invited in March 2004. Is it permissible for respondents 2 and 3 to award the maintenance contract for cleaning the Hospitals on nomination basis? A reading of the relevant instructions in G.O.Ms.No.90, dated

17.04.2003, would compel this Court to answer the query in the negative.

As noticed supra, the Government in orders in G.O.Ms.90, dated 17.04.2003, issued comprehensive instructions for efficient functioning of HDS in District/Health Hospitals. Paragraph 8(i)(a) and paragraph 9(v) are relevant and read as under.

> **8. Financial powers**:
>
> i) The Hospital/Institution Development Society is empowered to utilize the funds which includes accruals from user charges, collections, donations etc as follows:
>
> a) Undertake maintenance and uninterrupted provision of basic amenities and essential services in the institutions including sanitation, bio-medical waste disposal etc., through private contracting agencies on tender basis and Civil works, Electrical works, Water facilities by entrusting to APHMHIDC or any other Engineering Dept. which offers superior quality at competitive costs, duly depositing the funds to that effect.
>
> 9.(v). Hospital/Institutions Development Society is also empowered to select contractor for supply of good diet in the institution by calling for tenders or as prescribed by the Government. Development Society/concerned staff should monitor and ensure the supply of good quality diet to patients as per norms and procedure prescribed by the Government from time to time.

The HDS, Kadapa District draws its existence and sustenance only on G.O.Ms.No.90, and other Government Orders. It was bound by the instructions contained therein. When the Government instructions are to the effect that HDS should maintain all basic amenities and bio-medical waste disposal through private contract agencies on tender basis, it would not be permissible either for the second respondent or the Commissioner of APVVP to award the contract on nomination basis. Such a course is *ex facie* illegal and arbitrary violating Article 14 of the Constitution of India.

When the other writ petitions are pending before this Court, the third respondent again issued a tender notice in the newspaper, dated 08.07.2005, notifying tenders for awarding maintenance contract for sanitation work for a period of six months. This is challenged by the fourth respondent in W.P.No.15393 of 2005. The only submission made therein is that under G.O.Ms.No.581, dated 06.11.1996 as amended by G.O.Ms.No.30 MA, dated 18.01.2000, it is permissible for the respondents to award maintenance contract on nomination basis without participation in tenders. This Court has carefully gone through the two G.Os. These were issued in relation to sanitation works in Municipalities/Municipal Corporations and have no application to Hospital Development Societies, which are issued by the Government in G.O.Ms.No.90, dated 17.04.2003. In this writ petition, counsel has not made any other submission.

In the result W.P.No.11323 of 2005 is allowed and W.P.No.15393 of 2005 is

dismissed. The respondents 2 and 3 would be at liberty to finalise tenders invited pursuant to tender notification dated 08.07.2005 published in the newspaper, within a period of one week from today and award the maintenance contract for cleaning and sanitation works in the Hospital to a successful bidder. There shall be no order as to costs. Insofar as other writ petitions, being W.P.No.6057 of 2004 and 6541 of 2005 are concerned, the cause of action does not survive in view of the orders as above and they are accordingly dismissed as infructuous. No costs.

_____

(V.V.S.RAO, J)

29.07.2005

vs